

## REMARKS

Applicants respectfully request the finality of the pending Office Action be withdrawn for two reasons. First, the Official Action misstates the claim of priority. Second, the Official Action introduces new grounds of rejection not necessitated by an Amendment nor based on information submitted in an information disclosure statement.

### **I. Right of Priority**

#### **Request for Withdrawal of the Finality of the Office Action**

The pending Application claims priority to three earlier filed utility applications. The Application contains no claim to the Provisional Application recited in the Official Action (OA). OA, paper # 20100809 at pg. 2.

The independent claims of the pending application are entitled to the benefit of *at least* U.S. Pat. No. 6,868,386, ('386) because the pending application contains a specific reference to the '386 application, was filed before the '386 issued, and is supported by the prior application's written description as shown in Applicants' June 9, 2010, response.

Because the Official Action misstates the Application's claim of priority, fails to consider the facts presented, and fails to respond to Applicants' remarks, the outstanding Office Action is improper. For this reason, Applicants respectfully request the finality of the Office Action be withdrawn.

### **II. Double Patenting**

#### **Request for Withdrawal of the Finality of the Office Action**

An Office Action shall not be made final when a new ground of rejection is introduced that is neither necessitated by Applicants' amendment of the claims nor based on information submitted in an information disclosure statement. MPEP § 706.07(a). The Non-Final Office Action mailed December 23, 2009, did not include non-statutory double patenting claim rejections. The pending Final Office Action introduces two double patenting rejections against several claims. The claims are un-amended and the double patenting rejections are not based on references cited in an information disclosure statement. Because of these facts, the finality of the Office Action is premature for this reason too. *See* MPEP § 706.07(a).

Since the pending claims are not yet allowed and the OA is providing new grounds of rejection, Applicants respectfully request the finality of the Office Action be withdrawn.

Alternately, Applicants respectfully request withdrawal of these new grounds of rejection. The OA does not provide the factual findings or reasoned explanations that are required to support an obviousness rejection. MPEP § 804 (explaining obviousness double patenting determination parallels the guidelines for a 35 U.S.C. 103(a) that include factual findings). Simply stating that four phrases, “vehicle operating states and driver actions,” “trigger event,” “operating state of a vehicle” and “preselected relationship to the safety standards,” have only one meaning (purportedly meaning “track vehicle data and levels of risk”), does not provide a reasoned explanation or a citation of facts to support such a conclusion. Since rejections for obviousness cannot be sustained by mere conclusory statements, Applicants respectfully request withdrawal of this rejection. MPEP § 2141 and 2143; Examination Guidelines Update: Developments in the Obviousness Inquiry After KSR v. Teleflex, (Fed. Reg. Vol. 75, No. 169) at pg. 53645-53649 (recognizing that “obviousness cannot be sustained by mere conclusory statements”).

### III. – XXV. 35 U.S.C. § 103.

Claims 200, 223 – 239, and 261 stand rejected under Tobey (U.S. Patent 6,714,894) in view of Burge (U.S. Patent Publication 2002/0111725). Application claims 200, 223 – 232, and 234 – 239 and 261 are fully supported by the priority claim and have an effective filing date before the Tobey and Burge references. Also, Burge acknowledges at least some of Applicants’ priority patents were known (e.g., prior art) prior to Burge’s invention.

The table below sets forth some non-limiting examples of written description support for the pending independent claims found in Applicants’ priority document, U.S. 6,868,386. Other portions of the specification not specifically mentioned as well as the other priority documents also provide support for the rejected claims. The references to the U.S. 6,868,386 specification are of the form **column:lines**.

Claims	Support
200	1:24-34; 4:53-58; 5:27-28; 13:36-45; Figs. 2, 5 & 6
223	1:24-34; 4:30-58; 5:27-42; 7:44-69; 13:36-42; Figs. 2, 3, 5, & 6
224	1:24-34; 4:30-58; 5:27-42; 7:44-49; 13:38-42; Figs. 5 & 6
225	1:24-34; 4:30-58; 5:27-42; 13:37-42; Figs. 5 & 6
261	1:24-34; 4:22-58; 5: 27-28; 7:44-8:6; 10:53-58; 12:15-23; 13:36-42, Fig. 2, 5 & 6

Since the cited references are not prior art under 35 U.S.C. § 102 or 35 U.S.C. § 103 to the pending independent claims, the cited references cannot render the pending dependent claims obvious.

Because the pending application contains a specific reference to the '386 application, was filed before the '386 issued, and is supported by the prior application's written description, the claimed inventions pre-date the Tobey and Burge references. Applicants therefore respectfully ask the Examiner to withdraw this rejection.

**XXVI. Conclusion.**

In view of the remarks above, Applicants respectfully submit that the claims are in condition for allowance. If any issues remain, Applicants request that Examiner Woods call the undersigned to expedite the prosecution of the application.

Respectfully submitted,

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